

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

FILED IN OPEN COURT
DATE: 7/22/04
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

PERRY MORRISON BEALE

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Criminal No.

3.0401200052

PLEA AGREEMENT

I, **PERRY MORRISON BEALE**, and my counsel, Richard H. Milnor, Esquire, have entered into a plea agreement with the United States of America, by counsel, pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms and conditions of this agreement are as follows:

1. CHARGES IN THE INFORMATION AND PUNISHMENT

I have been charged with thirty-eight counts (38) in Information No. _____.

Counts One through Thirty-Eight of the Information charge me, from on or about July, 1999, through on or about November 15, 2002, with engaging in a scheme to defraud and to obtain money by false pretenses by using the United States mails, in violation of Title 18, United States Code, Section 1341. The maximum statutory penalty for Counts One through Thirty-Five (per count) is a fine of \$250,000 and five (5) years imprisonment, and a period of supervised release, and the maximum statutory penalty for Counts Thirty-Six through Thirty-Eight (per count) is a fine of \$250,000 and twenty (20) years imprisonment, and a period of supervised release.

I further understand that my supervised release may be revoked if I violate its terms and conditions. If my supervised release is revoked, the original term of imprisonment may be increased. I understand that a violation of supervised release increases the possible period of incarceration.

2. CHARGES TO WHICH I AM PLEADING GUILTY AND WAIVER OF RIGHTS

I will enter a plea of guilty to **Counts One through Thirty-Eight** of the Information, charging me, from on or about July, 1999, through on or about November 15, 2002, with engaging in a scheme to defraud and to obtain money by false pretenses by using the United States mails, in violation of Title 18, United States Code, Section 1341. The maximum

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statutory penalty for Counts One through Thirty-Five (per count) is a fine of \$250,000 and five (5) years imprisonment, and a period of supervised release, and the maximum statutory penalty for for Counts Thirty-Six through Thirty-Eight (per count) is a fine of \$250,000 and twenty (20) years imprisonment, and a period of supervised release

In addition, my assets may be subject to forfeiture. I understand that fees may be imposed to pay for incarceration or supervised release and that there will be a \$100 special assessment per felony count of conviction.

My attorney, Richard H. Milnor, Esquire, has informed me of the nature of these charges and the elements of these charges which must be proved by the United States beyond a reasonable doubt before I could be found guilty as charged.

I acknowledge that I have had all of my rights explained to me and I expressly recognize that I have the following constitutional rights and, that by voluntarily pleading guilty, I knowingly waive and give up these valuable constitutional rights:

- a. The right to plead not guilty and persist in that plea.
- b. The right to a speedy and public jury trial.
- c. The right to assistance of counsel at that trial and in any subsequent appeal.
- d. The right to remain silent at trial.
- e. The right to testify at trial.
- f. The right to confront and cross-examine government witnesses.
- g. The right to present evidence and witnesses in my own behalf.
- h. The right to compulsory process of the court.
- i. The right to be presumed innocent.
- j. The right to a unanimous guilty verdict and for specific sentencing issues.
- k. The right to appeal a guilty verdict and sentencing issues.

I am pleading guilty as described above because I am in fact guilty and because it is in my best interest to do so and not because of any threats or promises. There has been no representation made whatsoever by any agent or employee of the United States to me as to what the final disposition of this matter should or will be.

It is understood that the matter of sentencing is within the discretion of the Court, subject to the United States Sentencing Guidelines ("Sentencing Guidelines") and this Agreement. I understand that the Sentencing Guidelines apply to this charge and may create

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a presumption of a mandatory period of incarceration. I have discussed sentencing issues with my attorney and realize that there is a substantial likelihood that I will be incarcerated. I understand that I will not be eligible for parole during any term of imprisonment imposed. I understand that the sentence will be determined presumptively from a variety of factors involved in the offense and related conduct, including my role in the offense and my prior criminal history.

3. SENTENCING GUIDELINE PROVISIONS

The 2002 Sentencing Guidelines Manual has been used for my case. I agree that Sentencing Guideline Section 2B1.1(a), with a base offense level of six (6), is applicable to my criminal conduct. I understand and agree that the amount of loss attributable to the offenses for which I have been charged is between \$400,000 and \$1,000,000, and is the amount which is readily provable by the United States at this stage of the investigation, and, therefore, §2B1.1(b)(1)(H), which adds fourteen (14) levels, is applicable to my conduct. I agree that my offenses involved an abuse of trust, which adds two (2) levels pursuant to §3B1.3, and a scheme to defraud more than fifty (50) victims, which adds four (4) levels pursuant to §2B1.1(b)(2)(B).

The United States also takes the position that the defendant's conduct involved the conscious or reckless risk of serious bodily injury pursuant to §2B1.1(11). We understand the defendant will contest the government's position concerning the application of §2B1.1(11) at sentencing and that the Court will make that determination by applying a preponderance of the evidence standard.

Finally, the United States agrees not to seek an upward departure from the applicable guideline range.

4. ACCEPTANCE OF RESPONSIBILITY

If, in fact, I accept responsibility for my actions, testify truthfully if called upon to do so, acknowledge factual guilt before the Court at the time of my guilty plea and sentencing, and fulfill the conditions of this plea agreement, I understand that the United States, through its attorney, will recommend that the Court grant me a two (2) level reduction in my offense level for acceptance of responsibility under Guideline Section 3E1.1(a). I must clearly demonstrate acceptance of responsibility for my criminal offenses. **If I agree to plead guilty before 1:00 p.m. on July 16, 2004, the United States will file the appropriate papers authorizing an additional one (1) level reduction in my offense level for acceptance of responsibility under Guideline Section 3E1.1(b).**

Agreed
7/15/04
[Signature]

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I understand that any attempt to deny that I committed the crimes to which I have agreed to plead guilty, any attempt to withdraw my guilty plea, the commission of any new crimes, or any other breach of this Agreement, including my failure to pay my mandatory special assessment, will nullify the United States agreement that I should receive credit for acceptance of responsibility.

5. MANDATORY ASSESSMENT

I understand that persons convicted of crimes are required to pay a mandatory assessment of \$100.00 per felony count of conviction. I agree that I will submit a check or money order for the total amount of the assessment in my case to the United States Attorney's Office upon my acceptance of this plea agreement and upon returning to them a signed copy of this plea agreement. I will make the check or money order payable to **Clerk, United States District Court** for the total amount of \$3800.00. The United States Attorney's Office may, at its option, withdraw from this plea agreement unless and until this payment is made. Further, I understand and agree that if I fail to pay the special assessment on, or prior to, the date of my sentencing, I will not have demonstrated minimal acceptance of responsibility and should not be granted any reduction in my offense level under the Sentencing Guidelines for acceptance of responsibility.

6. RESTITUTION

Pursuant to 18 U.S.C. § 3663A, I agree to pay restitution based upon the entire scope of my criminal conduct, not just the charges to which I am pleading guilty. I agree and stipulate that a requirement that I pay restitution should be imposed upon me as part of any final judgment in this matter. I understand that I am responsible for restitution in the amount of \$_____. I agree that a restitution order should be issued by the Court totaling \$_____ pursuant to Title 18, United States Code, Section 3663.

I agree to pay restitution to the following victims in the specified amounts:

See Attached Chart

I agree that the amount of restitution is payable in full immediately. However, because of the my lack of sufficient assets to pay the fine or restitution in full immediately, the United States and I agree that I will make minimum payments of at least \$200.00 per month during the time I am on probation, supervised release, or am incarcerated, which amount will be subject to change if my financial situation changes.

I further agree that my failure to make good faith efforts toward payment of this

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specific restitution obligation, with whatever means I have at my disposal, will be a violation of this agreement and that the United States Attorney will be free to refile any criminal charges and/or to bring any new criminal charges and to prosecute me on those charges. I will execute any documents necessary to release the funds I have in any repository, bank, investment or other financial institution in order to make partial or total payment toward the restitution imposed in my case.

I further agree to fully participate in inmate employment under any available or recommended programs operated by the Federal Bureau of Prisons, and to pay any fines, assessments or restitution not paid prior to incarceration through the auspices of such a program. I agree that any fines, assessments and restitution shall be immediately payable upon entry of a judgment of conviction.

I understand that the standard of proof in criminal and civil cases is substantially different, with the standard of proof in a criminal prosecution being much higher. Knowing this, I understand that the amount of loss, referred to in this Agreement, agreed to by the parties for the purpose of this Plea Agreement is conservative. I agree that the amount of loss referred to in this Agreement for plea purposes does not bind any victims of the offenses to which I am pleading guilty, who may be able to prove greater loss resulting from my conduct in future civil claims and/or civil suits.

7. DUTY TO PROVIDE FINANCIAL STATEMENT

I understand that in this case there is a possibility that substantial fines and/or restitution may be imposed. In order to assist the United States as to any recommendation in that matter and in order to assist the United States in any necessary collection of those sums, I agree to fully and truthfully submit a complete financial statement revealing all of my assets and liabilities to the United States on a form provided by the United States.

Within 30 days of the date of this Plea Agreement I agree to provide a complete financial statement to the United States Attorney's office detailing all income, expenditures, assets, liabilities, gifts and conveyances by myself, my spouse and my dependent children and any corporation, partnership or other business entity in which I hold or have held an interest, for the period starting on January 1st of the year prior to the year I enter my guilty plea. This financial statement shall be submitted in a form acceptable to the United States Attorney's office.

From the time of the signing of this agreement, I agree not to convey any thing of value to any person without the authorization of the United States Attorney's Office. I understand that a deliberate false statement as to these matters would be a felony under federal law, in violation of Title 18, United States Code, Section 1001 and Section 401, and

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could constitute a breach of the agreement by me and could render this Agreement null and void, regardless of any cooperation or assistance that I may have previously provided. Any dispute as to the truthfulness of my disclosure of assets may be subjected to a polygraph examination conducted by a qualified law enforcement examiner, selected by the United States. I understand that failure of such polygraph examination, without adequate explanation, could render this agreement null and void.

8. WAIVER OF RIGHT TO APPEAL SENTENCING GUIDELINES ISSUES AND RIGHT TO JURY DETERMINATION OF SPECIFIC SENTENCING FACTORS

I understand that I will have a copy of my presentence report well in advance of my sentencing hearing and that I will have an opportunity to go over it with my attorney and may file any objection to all or parts of it that I feel are not correct. I understand that I will have an opportunity at the sentencing hearing to bring witnesses, to cross-examine the government's witnesses, and to demonstrate to the Court what an appropriate sentence would be under the Guidelines. I agree that after my full and fair sentencing hearing, I will not then appeal any sentencing guidelines factors or the Court's application of the sentencing guidelines factors to the facts of my case. I am knowingly and voluntarily waiving any right to appeal sentencing guidelines factors, and am voluntarily willing to rely on the Court in sentencing me under the Sentencing Guidelines. I understand that the United States expressly reserves its right to appeal any Sentencing Guidelines issues.

I agree that the United States Sentencing Guidelines apply to my case and am waiving any right I may have for a jury determination of any and all facts relevant to the application of any Sentencing Guidelines provisions and consent to a determination of any and all facts and a determination of the application of any and all Sentencing Guidelines factors by the United States District Judge. I agree that the District Judge should make any Sentencing Guidelines determinations using the preponderance of the evidence standard. I understand that by signing this plea agreement I waive any right to a jury determination of sentencing factors that may exist under *Blakely v. Washington*, 2004 WL 1402697 (June 24, 2004), *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and any cases interpreting these two Supreme Court decisions.

9. WAIVER OF RIGHT TO COLLATERALLY ATTACK THE JUDGMENT AND SENTENCE IMPOSED BY THE COURT

I further agree to waive my right to collaterally attack, pursuant to Title 28, United States Code, Section 2255, the judgment and any part of the sentence imposed upon me by the Court.

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10. INFORMATION ACCESS WAIVER

I knowingly and voluntarily agree to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a.

11. WAIVER OF WITNESS FEE

I agree to waive all rights, claims or interest in any witness fee that I may be eligible to receive pursuant to Title 28, United States Code, Section 1821, for my appearance at any Grand Jury, witness conference or court proceeding during the pendency of this case.

12. WAIVER OF STATUTE OF LIMITATIONS

If, for any reason, this Plea Agreement is withdrawn or otherwise not consummated by the entry of the convictions and sentences provided for under this Plea Agreement or if this Agreement is set aside by any court, I hereby waive my right to raise the defense of the statute of limitations as to any charges reinstated before the Court which were brought in the Information against me but dismissed as a result of this Plea Agreement.

13. COMPLETION OF PROSECUTION

I understand that except as provided for in this plea agreement, there will be no further prosecution of me for any matters about which the United States has specific knowledge gained from the investigation that gave rise to the charges contained in this Information.

14. LIMITATION OF AGREEMENT

This agreement is limited to the charges contained in the Information.

15. REMEDIES FOR BREACH OF PLEA AGREEMENT

I understand that if I breach any provision of this agreement, at any time, including any attempt to withdraw my guilty plea, the United States Attorney's office may, at its election, pursue any or all of the following remedies: (a) declare this plea agreement void

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and proceed to trial; (b) refuse to recommend that I be credited with acceptance of responsibility; (c) seek an upward departure from the guidelines range, or seek imposition of a sentence at the high end of the guidelines range; (d) terminate my opportunity to perform substantial assistance, if such opportunity has been provided, or refuse to make a substantial assistance motion, regardless of whether substantial assistance has been performed or not; (e) withdraw any substantial assistance motion made, regardless of whether substantial assistance has been performed; (f) refuse to abide by any other sentencing or other stipulations contained in this plea agreement; (g) use this plea agreement, any statement I have made during any guilty plea hearing (including my admission of guilt), any proffer session, or during my attempt to provide substantial assistance, against me in this or any other proceeding; and (h) take any other action provided for under this agreement or by statute, regulation or court rule. I knowingly waive any right I may have under the Constitution, any statute, rule or other source of law to have any statement, or evidence derived from such statement, suppressed or excluded from going into evidence. The remedies set forth above are cumulative, and not mutually exclusive.

16. EFFECTIVE REPRESENTATION

I have discussed the terms of the foregoing plea agreement and all matters pertaining to the charges against me with my attorney and am satisfied with my attorney and his advice. I understand that I have the right to make known to the Court, at any time, any dissatisfaction I may have with my attorney's representation. I agree to make known to the Court no later than at the time of sentencing any dissatisfaction or complaint I may have with my attorney's representation. I hereby waive any claim I may have for ineffective assistance of counsel known and not raised by me with the Court at the time of sentencing.

17. GENERAL UNDERSTANDINGS

I understand that the Court is not bound by any recommendations or stipulations contained in this Agreement, and may sentence me up to the maximum provided by law.

I understand that if the sentence is more severe than I expected, I will have no right to withdraw my guilty plea.

I understand that a thorough presentence investigation will be conducted and sentencing recommendations independent of the United States Attorney's Office will be made by the presentence preparer, which the Court may adopt or take into consideration. I understand that any calculation regarding the guidelines by the United States Attorney's Office or by my attorney is speculative and is not binding upon the Court, the Probation

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Office or the United States Attorney's Office. No guarantee has been made by the United States Attorney's Office regarding the effect of the guidelines on my case.

I understand that the prosecution will be free to allocute or describe the nature of this offense and the evidence in this case and will in all likelihood recommend that I receive a substantial sentence.

I understand that the United States retains the right, notwithstanding any provision in this plea agreement, to inform the probation office and the Court of all relevant facts, to address the Court with respect to the nature and seriousness of the offense, to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report and to respond to any statements made to the Court by or on behalf of the defendant.

I understand that the United States will object to any downward departure from the sentencing guidelines, absent the filing of a motion permitting downward departure under Sentencing Guideline Section 5K1.1, Title 18, United States Code, Section 3553(e) and/or Federal Rules of Criminal Procedure 35(b).

I willingly stipulate that there is a sufficient factual basis to support each and every material factual allegation contained within the charging document to which I am pleading guilty.

I understand that this agreement does not apply to any crimes that I may commit hereafter, including perjury. I understand that if I should testify falsely in this or in a related proceeding that I may be prosecuted for perjury and that statements that I may have given authorities pursuant to this agreement may be used against me in such a proceeding.

I have not been coerced, threatened, or promised anything other than the terms of this plea agreement, described above, in exchange for my plea of guilty. I understand that my attorney will be free to argue any mitigating factors in my behalf and will be free to propose any alternatives to incarceration available under the sentencing guidelines. I understand that I will have an opportunity to personally address the Court prior to sentence being imposed.

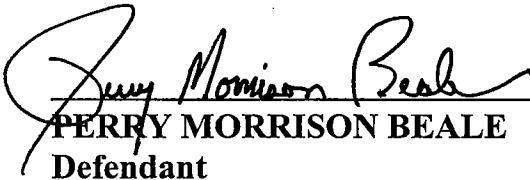
This writing sets forth the entire understanding between the parties and constitutes the complete Plea Agreement between the United States Attorney for the Western District of Virginia and me, and no other additional terms or agreements shall be entered except and unless those other terms or agreements are in writing and signed by the parties. This

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Plea Agreement supersedes all prior understandings, promises, agreements, or conditions, if any, between the United States and me.

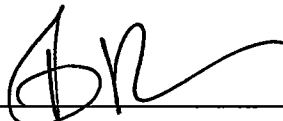
I have consulted with my attorney and fully understand all my rights with respect to the offenses charged in the pending information. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it. Being aware of all of the possible consequences of my plea, I have independently decided to enter this plea of my own free will, and am affirming that agreement on this date and by my signature below.

Date: 7/22/04


PERRY MORRISON BEALE
Defendant

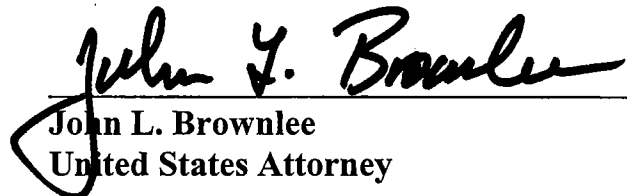
I represent PERRY MORRISON BEALE. I have fully explained to my client all rights available to my client with respect to the offenses charged in the pending information. Further, I have reviewed the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with my client. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one and it is a decision with which I agree.

Date: 7/22/04


Richard H. Milnor, Esquire
Counsel for Defendant

Acknowledged:

Date: July 22, 2004


John L. Brownlee
United States Attorney

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